

## Drug Control and Prevention: Italy's Legal Framework

*By Emilio Torrini*

We are currently witnessing a gradual paradigmatic shift globally, with an increasing number of countries opting to experiment with forms of drug liberalization. In this context, Italy's legislative framework for drugs continues to evolve. However, broadly speaking, it remains firmly rooted in prohibition.

In order to fully understand why the country's drug policies are as they are today, it is important to study their evolution, beginning almost a century ago.

The term "psychotropic" was introduced for the first time in the Italian legal system in 1923. The adoption of Law n. 396/1923 implemented the provisions contained in the International Opium Convention signed at The Hague on January 23, 1912. Use of drugs such as morphine, cocaine and "poisonous substances that have, even if taken in small quantity, psychotropic effects" became regulated and controlled by the Minister of Internal Affairs.

Following the introduction of the Italian Code of Criminal Procedure in 1930, also known as the *Rocco Code*, the definition of "poisonous substances" was replaced with "psychotropic substances" and provisions regulating their use were contained in articles n. 446, 447, 729, 730. Despite being within the Criminal Code, the change of language from "poisonous" to "psychotropic" was indicative of attitudes toward drug use at the time – ones which, from a legislative standpoint, sought to mitigate the health risks associated with use rather than treat it solely as a criminal issue.

It is interesting to note that both Law n. 396/1923 and the *Rocco Code* did not establish punishments for the use of narcotic drugs as such, unless the cases in which this phenomenon occurred had negative consequences on public order.

This changed, though, with the introduction of Law n. 1041/1954, which severely punished the possession of narcotic substances, both in relation to trafficking and personal use. For the first time, drugs consumers were categorized similarly to drug producers and drug smugglers, even if caught in possession of a small amount of an illicit substance.

Calls to reform this punitive system were growing by the end of the 1960s, however, when unprecedented societal transformations were taking place throughout Europe. In the early 1970s, Italy lifted restrictions on both abortion and divorce, and with regards to drug policy, Law 685/1975 gave life to a significant reform of Italian drug legislation, both in terms of treatment for criminal offenders and of medical and healthcare interventions.

Two of the principal innovations introduced by this law were the following:

- No punishment for minor drug-related crimes, such as the purchasing or possession of small amounts of non-therapeutic drugs for personal use.
- Detailed forms of intervention in terms of prevention, treatment and social re-integration for people suffering from problematic drug use. This included the possibility of being recommended to attend compulsory medical treatment, in certain circumstances.

Following the introduction of Law 685/1975, drug use in Italy rose. Such an uptick is not uncommon following a loosening of restrictions, though modern day decriminalization models show that use in the long-term will likely stabilize, or indeed decline. However, with few other examples to draw on at the time, the rise in use created a nervous political environment.

After years of intense and heated debate on the issue, Italy's Parliament approved Law 162/1990, representing a U-turn in the country's drug policy. For example, within the law, article 72, paragraph 1, explicitly prohibited drug consumption. Thus, drug users caught in violation of this law faced potential imprisonment, irrespective of the amount in their possession.

In addition, the legislator included a series of complementary administrative measures of sanction, such as suspension of the person's driving license, the potential of curfew and a ban on being in certain public places, and community service.

The harsh penalties laid down by article 72, paragraph 1, along with the administrative measures, only lasted for three years, however, with a national referendum in 1993 repealing both.

In terms of criminal law, the piece of legislation passed in 1990 – without the aforementioned article and measures -- was not as problematic as that passed in 1954 and accounted for a seemingly simple distinction between producer and smuggler on the one hand, and consumer on the other. In practice, though, this did not play out so simply as what made the difference between these categories was the “subjective” purpose of possession. This legislative framework, therefore, led to a noticeable uncertainty in terms of penalties handed down, especially in cases where it was not easy to determine whether the use of substances involved third parties or not.

Further modifications were introduced following the provisions of decree law 30.12.2005 n. 272 (*Urgent Measures to ensure safety and funding for the 2006 Turin Winter Olympics Games and provisions to facilitate the recovery of drug offenders*), which eventually become Law 49/2006, otherwise known the *Fini-Giovanardi*. The motive behind this crude addition of drug legislation amendments to an Olympic funding bill was largely done in order to appease the country's right-wing electorate in the run up to general elections being held the same year.

To illustrate the political and public context of the time, this Law followed the so-called *Bossi-Fini* immigration bill passed in 2002, which is considered to be one of Italy's most retrograde

pieces of legislation concerning the issue. It is interesting to point out that a similar combination of prohibition -- in this case against alcohol -- and anti-immigration measures, specifically against Italian immigrants, can be found in US legislation in the early 1920s in an effort to combat the Italian Mafia who were heavily involved in drugs smuggling.

The principal measures established by Law 49/2006 are the following:

- An introduction of quantitative thresholds in order to effectively distinguish between consumption and trafficking. As previously mentioned, there was an enormous degree of subjectivity in distinguishing between drug users and traffickers -- the threshold under the previous law was defined as a "maximum quantity attributable to personal use only" -- which meant many drug users were prosecuted for the simple possession of even a minimal amount. However, when looking at the amounts established under the 2006 Law -- the tolerated limits for the active ingredient contained were fixed at 500 mg for cannabis, 250 mg for heroin, 750 mg for cocaine, for example -- it's immediately obvious that these thresholds are not progressive in any way.
- Penalties provided by art. 73 and 74 (concerning production, dealing and trafficking) for the possession of drugs above the established thresholds were tightened as a result of abolishing the distinction between "soft" and "hard" drugs under the law<sup>1</sup>, meaning a sentence of 6 to 20 years could be handed down for most substances. Comparatively, Law 162/1990 established different penalties for different drugs, based on a broader tables system. In Table II, for example, a person could receive 2 to 6 years for a cannabis offense, while in Table I a person could receive from 8 to 20 years for an offense involving "hard" substances. Law 49/2006 law reduced the number of tables from four to two and introduced a substantial increase of the penalty through the reclassification of cannabis in Table I.
- Provisions on less severe penalties for "minor" crimes when the person is found in possession of amounts slightly above the threshold, in which case the penalties range from 1 to 6 years imprisonment. This is a significant increase as under the 1990 law it was from 6 months to 4 years for cannabis, for example.
- Certain administrative sanctions were re-introduced for personal use offenses (driving license suspension, passport suspension), but the duration of them noticeably increased (from one month to one year, whereas before it was from two to four months). More importantly, if the drug user is undergoing a treatment program for problematic use, this fact does not impede the sanction delivery, as was previously the case. Therefore, these recovery programs were no longer alternative sanctions, but compulsory and in addition to the penalties.

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<sup>1</sup> Nordegren T. *The A-Z Encyclopedia of Alcohol and Drug Abuse*. Parkland, Fla.: [Brown Walker Press](#). 2002. p. 327.

The impact of Law 49/2006 was devastating, particularly on the country's already unstable penitentiary system. In 2012, Italian prisons held around 66,000 inmates<sup>2</sup>, well over what these institutions are able to house. Half of these were problematic and recreational drug users, along with small-time dealers. Furthermore, one in three prisoners was put in jail every year for violation of Article 73<sup>3</sup>. On the contrary, for infringement of Article 74, which punished criminal organization and association with conspiracy to traffic narcotics, only 250 people were imprisoned in 2012. In total, only 761 inmates are now in jail due to this offense.

In light of these numbers, it is possible to affirm that this legislation was totally inadequate in countering major drug trafficking operations, and instead disproportionately targeted low-level offenses. In 2012, for example, out of the 35,762 reports of stop and search carried out in Italy, 28,095 were related to cannabis, 78.5 percent.

Regarding possible alternative measures of sanction – such as attending drug treatment programs as opposed to serving a prison sentence – these became increasingly limited under the 2006 law, thus contributing to the huge overcrowding of Italian prisons. The previous law (162/1990), driven by the conviction of the futility of short detention for minor offenses, had purposefully set up a mechanism to freely access alternative measures, while Law 49/2006 essentially revoked this.

Due to the new lack of emphasis on treatment, the total number of problematic drug users accessing treatment services dropped significantly, from 3,852 in 2006 to 2,816 in the beginning of 2012 (- 26.9 percent)<sup>4</sup>. A note should be made, however, that evaluating this data is not straight forward in terms of solely assessing the impact of drug legislation; during this period, patient transition from health care treatment in prison to the National Health Service produced a substantial difference between the data collected by the National Penitentiary Department and those gathered by Regional Departments.

Despite possible problems with data, there is a particularly damning indictment of the 2006 law in action taken by the National Anti-Drug Department, chaired by Dr. Giovanni Serpelloni, in 2011. In this year, a new framework for the detection of problematic drug users within the penitentiary system was imposed, one which was so arbitrary it meant that many people suffering from problematic use were deemed to be recreational users, and thus not offered treatment.

In 2013, the legitimacy of Law 49/2006 was raised by the Third Criminal Chamber of the Supreme Court of Cassation, the Rome Court of Appeals and the Viterbo Ordinary Court,

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<sup>2</sup> Source: Department of Penitentiary Administration - Office for the development and management of automated information system - Statistics Section. Last update on 31 December 2012 (Dipartimento Amministrazione Penitenziaria - Ufficio per lo sviluppo e la gestione del sistema informativo automatizzato - Sezione statistica).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

meaning the law would be put before the country's Constitutional Court<sup>5</sup>. The following year, sentence n.32/2014 of the Constitutional Court declared the constitutional illegitimacy of articles 4-bis e 4-vicies ter leading to the rejection of the Law 49/2006. Court judges deemed that by pushing the law through on the back of the 2006 Winter Olympics funding decree meant that it had not followed proper parliamentary procedure.

Due to the numerous rules and amendments adopted and repealed concerning Italian drug policy over the past two decades, it would not be sufficient to simply restore the 1990 law in the wake of rejecting Law 49/2006. This is because it was in conflict with the many other rules adopted over the years and because it did not take into account all of the updates introduced on the matter since 2006, namely the tabulation of so-called "new drugs" as they were identified.

This represented a perfect moment in Italian drug policy history to finally formulate a new law that would strike the right balance between reducing the harm done by psychoactive drugs and reducing the harm that results from strict legal prohibition. Sadly, though, the opportunity appears to have been missed.

In March 2014, the Council of Ministers (CDM) approved decree law 36/2014 on drugs. Settling on the final text was not easy: the justice minister, Andrea Orlando, had placed a "veto" on the original text, which initially grouped together all substances into only two tables rather than the four under Law 162/1990. This would have meant restoring the non-distinction between "soft" and "hard" substances, and therefore implementing the provisions contained in the unconstitutional Law 49/2006 again. In the end, decree law 36/2014 was approved by the CDM and the subsequent proposed bill n.2215 ensured the distinction between soft and hard drugs and the health tables.

The text eventually passed and written into law consists of 4 articles. One section concerns the consumption and smuggling of narcotics and psychotropic substances, while another deals with the so-called "off label" drugs, or pharmaceuticals. The latter section is important to note as it represents an updating of Italian legislation to control medicinal drugs with regards to how they can be supplied, what dosage can be administered, and how frequently. Thanks to an amendment added to article n.3, even drugs, the effectiveness of which has been proven by international studies in relation to therapeutic use other than the one prescribed, may be included in the bill, both in the presence of an alternative and viable treatment or cure both in absence of clinical trials by the Italian Drug Agency (AIFA).

As far as psychotropic substances are concerned, the new law takes a small step forward by redefining drug tables, redistributing the approximately 500 substances classified since 2006. There are now four tables; hard drugs are included in the first and the third ones, soft drugs in the second and the fourth. Every variant of herbal cannabis preparations is categorized as a soft

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<sup>5</sup> The Constitutional Court of Italy (*Corte Costituzionale della Repubblica Italiana*) is a supreme court of Italy, the other is the Court of Cassation (*Corte di Cassazione*). Sometimes, the name *Consulta* is used as a metonym for it, because its sessions are held in *Palazzo della Consulta* in Rome.

drug, while all the synthetic drugs that may contain marijuana's active ingredient tetrahydrocannabinol (THC) fall into hard drugs table 1. This categorization is partly a response to the ever evolving market of new psychoactive substances (NPS), some of which contain THC.

Possession for personal use is no longer be a criminal offense under the new law, though the previous administrative sanctions – e.g. suspension of driver's license -- remain valid, albeit with redefined punishment periods (for hard substances, it's now from 2 months to 1 year, whereas for a soft drugs offense it is 1 to 3 months).The “small amount” for personal use no longer exists either as it now falls on the judge to consider what exceeds the “threshold levels” set by the Ministry of Health.

Regarding drug dealing, those convicted face imprisonment from 6 months to 4 years (previously it was from 1 to 6 years) and a fine of €1,000-€15,000 (with Law 49/2006 it was from €3,000-€26,000). This new legal framework for drug dealing reduces the risk of pre-trial detention and means that an arrest can only be carried out in the case of *flagrante delicto* (where someone is “caught in the act”). It will be up to the judge to determine the length of the penalty, based on the quality and quantity of smuggled substance, along with other factors surrounding the case.

In addition, the new drugs law reintroduces community service among the possible penalties. In the case of small amounts of narcotics or other minor offenses committed by a problematic drug user, the court may decide to apply the penalty of community service, rather than detention and fine.

It is noticeable that the new law is, *prima facie*, based on constructing a more tolerant approach toward drug users and/or small-time dealers unlike the previous, unconstitutional Law 49/2006, which was perhaps driven largely by political and social inclinations of the times. It is, indeed, decriminalization of a sorts. However, the ambiguities in thresholds for drug possession, and the arbitrary nature with which a judge can seemingly determine the outcome of the case in question means Italy still has a long way to go to fully implement drug legislation that is evidence-based and health-oriented.

Decriminalizing the possession and use of small quantities of drugs represents a necessary step forward in any comprehensive reconsideration of drugs legislation. And especially in Italy, what is needed in this sense is a removal of cultural obstacles and also to emphasize how important it is to combat prejudices and increase people's awareness of this matter. Both the government and citizens have to come to the terms with the fact that many people use drugs, whether they are legal or not, and accept it. Keynes' observation about economic theory is salient and applies here: “The difficulty lies, not in the new ideas, but in escaping from the old ones, which ramify, for those brought up as most of us have been, into every corner of our minds”.<sup>6</sup>

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<sup>6</sup> Keynes, JM. *The General Theory of Employment, Interest and Money*. Turin, UTET, 2006.